

**REMARKS**

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1 and 6-11 are now pending in this application.

**Interview Summary**

Applicant's representative wishes to thank the Examiner and the Examiner's supervisor for conducting the interview of September 3, 2009. In accordance with the request in the Interview Summary that the Applicant file a statement of substance of the interview, please be advised that the Interview Summary accurately summarizes the interview, except that in a follow-up call after the interview the Examiner contacted Applicant's representative and indicated that the amendments discussed during the interview would overcome the current rejections.

**Rejection under 35 U.S.C. § 102/103**

Claims 1, 10, and 11 are rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Pub. No. 2003/0235730 to Noetzel *et al.* (hereafter "Noetzel"). This rejection is respectfully traversed.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See generally MPEP § 2131.

Amended claim 1 recites a control device of a vehicular fuel cell system comprising, among other things, a warm-up output control section and a run permission section, wherein the run permission section is configured to provide the vehicle with the run permission (1) when the voltage value of the fuel cell stack is equal to or more than a predetermined voltage value that is necessary before the vehicle may commence travel, wherein the predetermined voltage value is based upon the electric current value of the fuel cell stack, or (2) when the electric current value of the fuel cell stack is equal to or less than a predetermined current value that is necessary before the vehicle may commence travel, wherein the predetermined current value is based upon the voltage value of the fuel cell stack. Claims 10 and 11 include similar language.

Noetzel discloses an apparatus for controlling a fuel cell system in which a power switching device selectively connects and disconnects a fuel cell voltage to at least one load, depending at least in part on an operating fuel cell stack temperature, fuel cell voltage, and fuel cell current. See Noetzel at paragraph 0010.

However, Noetzel does not disclose or suggest a control device in which a run permission section is configured to provide the vehicle with the run permission (1) when the voltage value of the fuel cell stack is equal to or more than a predetermined voltage value that is necessary before the vehicle may commence travel, wherein the predetermined voltage value is based upon the electric current value of the fuel cell stack, or (2) when the electric current value of the fuel cell stack is equal to or less than a predetermined current value that is necessary before the vehicle may commence travel, wherein the predetermined current value is based upon the voltage value of the fuel cell stack, as recited in claims 1, 10, and 11.

Instead, Noetzel only discloses determining whether a start-up value of  $I_{STACK}$  is greater than a predetermined threshold. See Noetzel at paragraphs 0028-0032. Noetzel does not disclose or suggest that the predetermined threshold is based on a voltage value of a fuel cell stack, as recited in claims 1, 10, and 11. Noetzel is silent in regard to the nature of the predetermined threshold, which appears to be a predetermined number. In addition, Noetzel does not disclose or suggest comparing a voltage value of a fuel cell stack to a predetermined

voltage value that is based upon an electric current value of the fuel cell stack, as recited in claims 1, 10, and 11.

For at least the reasons discussed above, Noetzel does not anticipate or render obvious claims 1, 10, and 11 because Noetzel fails to disclose or suggest all of the features of claims 1, 10, and 11. Reconsideration and withdrawal of this rejection is respectfully requested.

In regard to the interpretation of the “means” language of claim 11 provided on pages 6 and 7 of the Office Action, Applicant respectfully submits that this interpretation is rendered moot in light of the amendments to the claims.

**Rejections under 35 U.S.C. § 103**

Claim 6 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Noetzel in view of JP 2002-134150 to Ito (hereafter “Ito”). This rejection is respectfully traversed. Ito fails to remedy the deficiencies of Noetzel discussed above in regard to independent claim 1, from which claim 6 depends. Reconsideration and withdrawal of this rejection is respectfully requested.

Claims 7 and 8 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Noetzel in view of U.S. Pub. No. 2004/005487 to Matoba (hereafter “Matoba”). This rejection is respectfully traversed. Matoba fails to remedy the deficiencies of Noetzel discussed above in regard to independent claim 1, from which claims 7 and 8 depend. Reconsideration and withdrawal of this rejection is respectfully requested.

Claim 9 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Noetzel and Matoba in view of U.S. Pub. No. 2002/0134239 to Tang *et al.* (hereafter “Tang”). This rejection is respectfully traversed. Tang fails to remedy the deficiencies of Noetzel and Matoba discussed above in regard to independent claim 1, from which claim 9 depends. Reconsideration and withdrawal of this rejection is respectfully requested.

**Conclusion**


Applicant submits that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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